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January 17, 2017 *Via ECF and Hand Delivery*

Honorable Edgardo Ramos
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Bronx Independent Living Services, et al. v. Metropolitan Transportation Authority, et al.*, No. 16-cv-5023 (ER)

Dear Judge Ramos:

Plaintiffs submit this letter to oppose Defendants' request to limit the scope of discovery in this matter to a single affirmative defense. The restriction on discovery set forth in Defendants' proposed scheduling order presents a highly unusual departure from the ordinary course of litigation that is contrary to the interests of justice.[1]

Defendants' concern that discovery may be disproportionate is entirely hypothetical, based upon nothing more than the number of paragraphs in the Complaint and unfounded speculation that Plaintiffs may seek discovery beyond the actual claims alleged. In short, nothing has been put forth warranting a limitation on Plaintiffs' rights to pursue a determination of the legal responsibilities of Defendants to provide access to the Middletown Road subway station for those with mobility disabilities in light of the recent station construction and alteration.

Defendants are correct that under the Federal Rules, "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit" are relevant to the scope of discovery. Fed. R. Civ. P. 26(b)(1). These factors, however, fail to support Defendants' unusual request. The standard of relevance and proportionality "presents a relatively low threshold for a party to show that the material sought is relevant to any claim or defense in the litigation." *John Wiley & Sons, Inc. v. Book Dog Books, LLC*, 298 F.R.D. 184, 186 (S.D.N.Y. 2014) (internal quotations and citations omitted). Indeed, "the greater the relevance of the information in issue, the less likely its discovery will be found to be

[1] For the Court's convenience, we have attached electronic copies of both parties' proposed scheduling orders and our initial exchange of letters concerning the scope of discovery, all of which we submitted to the Court at the initial pretrial conference on January 12.

disproportionate." *Vaigasi v. Solow Mgmt. Corp.*, No. 11 Civ. 5088 (RMB)(HBP), 2016 WL 616386, at *14 (S.D.N.Y. Feb. 16, 2016). In this case, the critical importance of equal access to transportation for people with disabilities, combined with Defendants' greater resources and access to relevant information, favor full discovery.

Further, Defendants' position has no legal precedent. In all of the cases Defendants cite in their November 10 letter, the Court did not act to limit discovery until after discovery had already commenced and specific circumstances justified a limitation. *Vaigasi*, 2016 WL 616386, at *13-14 (holding that thousands of document requests not proportional to needs of single-plaintiff case); *Robertson v. People Magazine*, No. 14 Civ. 6759 (PAC), 2015 WL 9077111 at *1, 3 (S.D.N.Y. Dec. 16, 2015) (135 document requests demanding irrelevant and privileged information); *Alli v. Steward-Bowden*, No. 11 Civ. 4952 (PKC)(KNF), 2013 WL 5229995, at *3 (S.D.N.Y. Sept. 17, 2013) (bifurcation of discovery after discovery opened and amended complaint filed); *Laurin v. Pokoik*, No. 02 Civ. 1938 (WK)(DFE), 2002 WL 31260267, at *2 (S.D.N.Y. Oct. 9, 2002) (bifurcation after discovery commenced to determine whether court had jurisdiction over new claims in amended complaint). In this case, where no discovery has taken place to date, Defendants have not and cannot demonstrate that discovery will be irrelevant or disproportionate.

Finally, contrary to Defendants' representations at the initial pretrial conference, the Federal Transit Administration has not closed its inquiry into whether Defendants violated the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by failing to construct elevators at the Middletown Road station. The FTA and MTA engaged in multiple rounds of correspondence regarding FTA's conclusions of law and fact, but the final correspondence from the Director of the FTA Office of Civil Rights states: "At this time, we are carefully considering all information available to us, and we will reach a decision regarding the feasibility of elevators at the Middletown Road station in the near future. You will receive a final determination letter after we have completed our review." Ex. A, Letter from Linda Ford, Director, FTA Office of Civil Rights, to Carmen Bianco, President, MTA New York City Transit re: Middletown Road Station (Mar. 16, 2015). Plaintiffs are not aware of any additional correspondence and Defendants have not indicated a final determination had been made.

Accordingly, Plaintiffs respectfully request that the Court enter our proposed Case Management Plan and Scheduling Order so that discovery may begin.

Very truly yours,

Rebecca Rodgers
Attorney for Plaintiffs